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*1 Office of the Attorney General
Commonwealth of Kentucky

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December 21, 1990

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Dear Mr. Byrne:

This is in response to the recent letter and brief that you sent to us on behalf of the Jefferson County Fire Trustees Association and the Alliance of Jefferson County Fire Chiefs. You ask for an opinion concerning the expenditure of fire protection district tax funds and the use of fire protection district equipment. We will address each of these issues in turn.

1. Expenditure of Fire Protection District Tax Funds

The first issue raised in your letter and brief concerns the expenditure of fire protection district tax funds. Specifically, you ask us to address the question of whether fire protection district tax funds can be spent on various types of volunteer firefighter and family programs and activities, such as picnics, parties, bowling league memberships, softball and basketball league memberships, fire station recreational rooms, feeding volunteer firefighters after fire runs and after training sessions, dances, banquets and dinners, and recognition awards.

[KRS 75.040\(1\)](#), which creates and authorizes the expenditure of fire protection district tax funds, states in pertinent part:

Upon the creation of a fire protection district or a volunteer fire department district as provided in [KRS 75.010](#) to [75.031](#) the trustees of such district are hereby authorized to establish and operate a fire department and emergency ambulance service as provided in subsection (4) of this section in such district and to levy a tax upon the property in said district . . . for the purpose of defraying the expenses of such establishment, maintenance and operation of said fire department or to make contracts for fire protection for such districts as provided in [KRS 75.050](#). . . .

Accordingly, the tax funds collected by a fire protection district are authorized to be spent for two purposes: (1) to defray the expenses of the establishment, maintenance, and operation of the fire protection district; or (2) to make contracts for fire protection for the district.

In your brief, you argue that a fire protection district may spend its tax funds for purposes other than the two purposes specifically listed in this statutory provision. You state that a fire protection district may expend tax funds under the state's grant of police power, specifically for the health, safety, and general welfare of the citizenry. We disagree with your conclusion in this matter.

A fire protection district is a type of municipal corporation. [Kelley v. Dailey, Ky., 366 S.W.2d 181 \(1963\)](#). As such, it possesses “only those powers expressly granted by the constitution and statutes plus such powers as are necessarily implied or incident to the expressly granted powers and which are indispensable to enable it to carry out its declared objects, purposes and expressed powers.” [City of Bowling Green v. T & E Electrical Contractors, Inc., Ky., 602 S.W.2d 434, 435 \(1980\)](#). See also [City of Bowling Green v. Gasoline Marketers, Inc., Ky., 539 S.W.2d 281, 284 \(1976\)](#); [Griffin v. City of Paducah, 382 S.W.2d 402, 404 \(1964\)](#). Any doubt about the existence of a particular municipal power is resolved against its existence. [City of Horse Cave v. Pierce, Ky., 437 S.W.2d 185, 186 \(1969\)](#). See also [Griffin v. City of Paducah, 382 S.W.2d 402, 404 \(1964\)](#). When the question involves spending tax funds, the Kentucky courts “have uniformly given the strictest construction to such statutes as authorize . . . municipal bodies to expend funds raised by taxation, holding that the authority must be clear and convincing before [the courts] will uphold an expending or appropriating order or resolution.” [Jefferson County Fiscal Court v. Jefferson County, Ky. App., 128 S.W.2d 230, 231–32 \(1939\)](#). See also 64 C.J.S., “Municipal Corporations,” § 1835.

*2 We agree with you that the general rule is that “the state may delegate to its municipalities a portion of its police powers to enable them to promote the peace, safety, morals, health, and general welfare of their inhabitants.” [McQuillin, Municipal Corporations, § 24.37 \(3rd Edition\)](#). However, there are no inherent police powers in municipal corporations; the existence of any such police power is limited to the power delegated to the municipal corporation by the state. *Id.* at § 24.35.

We know of no statute by which the Commonwealth of Kentucky has delegated broad police powers to fire protection districts. You cite [KRS 75.160](#) in your brief, apparently to support your argument that a fire protection district has such broad police powers. That statute, however, is narrowly written to confer certain peace officer duties on a limited number of firefighters, and states, in pertinent part:

(2) The regular members of the fire department in fire protection districts, except volunteer firemen, shall have the same powers of arrest as now given by law to sheriffs of this Commonwealth and they are hereby expressly declared conservators of the public peace whose duties, in addition to their other prescribed duties, are to conserve the peace, enforce all laws and preserve order, and they shall have and are hereby expressly given the same right and the same power to arrest, search and seize as is now given by law to sheriffs of this Commonwealth, and they shall be at all times subject to the orders of the county judge/executive in which the fire district lies while enforcing the provisions of this section. Provided, however, That members of said fire departments shall not have the power to serve subpoenas, summonses and notices in civil cases and they shall receive no fees for performing any of the duties prescribed in this section as pertains to powers of law enforcement. . . .

While this statute clearly delegates certain peace officer duties to regular members of the fire department in fire protection districts (except volunteer firemen), it does not delegate general police powers to a fire protection district to promote the health and general welfare of the inhabitants of the fire protection district.

A fire protection district, although a municipal corporation, is not granted the same power by the state as other municipal corporations are granted by the state. Cities, for example, are granted broad powers to “exercise any power and perform any function within its boundaries . . . that is in furtherance of a public purpose of the city

and not in conflict with a constitutional provision or statute.”[KRS 82.082](#). There is no such broad grant of power to a fire protection district. Accordingly, court cases cited in your brief interpreting the power of a city are inapplicable to determining the extent of the power of a fire protection district.

It is our opinion that, absent any grant of power to a fire protection district other than that contained in KRS Chapter 75, a fire protection district is authorized to spend its tax funds for two purposes only: (1) to defray the expenses of the establishment, maintenance, and operation of the fire protection district; or (2) to make contracts for fire protection for the district.

***3** The question that you have presented concerns the first of these two purposes. Accordingly, we must decide whether spending the fire district's tax funds on the activities that you have described is allowed as spending the funds for the purpose of defraying the expenses of the establishment, maintenance, and operation of the fire protection district.

In determining what constitutes the establishment, maintenance, and operation of a fire protection district, it is helpful to remember that the purpose of a fire protection district is to prevent the loss of lives and property by fire. See, e.g., [KRS 17.210](#). With that purpose in mind, it is our opinion that expenditures that fit within the following categories, or that are indispensable to carrying out the objects included in these categories, are expenditures for the establishment, maintenance, and operation of a fire protection district:

1. Acquisition and maintenance of adequate fire protection facilities;
2. Acquisition and maintenance of adequate fire fighting equipment;
3. Recruitment, training, and supervision of firefighters;
4. Control and extinguishment of fires;
5. Prevention of fires;
6. Conducting fire safety activities;
7. Payment of compensation to firefighters and necessary support and supervisory personnel.

See, e.g., [KRS 17.210](#); [KRS 75.120\(2\)](#). See also [29 C.F.R. § 553.210](#).

Three of the expenditures that you have described appear to us to fit within these categories. The first expenditure, for fire station recreational rooms, is part of adequate fire protection facilities because such rooms are used by on-call firefighters who are waiting at the facilities between calls. The second expenditure, for feeding volunteer firefighters after fire runs and after training sessions, is part of the cost of extinguishing fires and training firefighters. The third expenditure, for recognition awards and awards dinners, is part of supervising firefighters.

The remaining expenditures that you mention (picnics, parties, bowling league memberships, softball and basketball league memberships, dances, and miscellaneous banquets and dinners) do not appear to us to fit within these categories or to be indispensable to carrying out the objects included in these categories.

In your brief, you appear to argue that a fire protection district's tax funds should be allowed to be spent on these activities because the activities are part of the compensation fixed by the district's board of trustees for the volunteer firefighters of the district. We agree with you that [KRS 75.120\(2\)](#) provides, in pertinent part:

The board may, in their sole discretion, appoint volunteer firemen and fix, by resolution, their compensation, if any, and provide for payment of this compensation.

We disagree with you, however, concerning the scope of the compensation authorized by this statutory provision.

It is our opinion that the word “compensation” in [KRS 75.120\(2\)](#) is limited to the payment of money to volun-

teer firefighters and does not extend to the provision of the type of activities that you describe. In a situation such as this one, in which compensation is authorized for services rendered, it is our opinion that the word “compensation” is limited to “[r]emuneration for services rendered, whether in salary, fees, or commissions.” Black’s Law Dictionary 283 (6th ed.1990). Further, the use of the word “payment” in connection with the word “compensation” in this statutory provision indicates to us that ““compensation” is limited to the payment of money; “payment” generally is not used in connection with providing the type of activities that you describe.

***4** You also argue that expending tax funds for these activities should be allowed because these activities promote the esprit de corps of firefighters, help to create a common bond among families of firefighters, increase the community spirit and dedication of firefighters, increase the team reliance of firefighters, and help keep firefighters in their districts. We agree that such goals are commendable and worthwhile. It is the activity, however, that must be evaluated, rather than the goal, in determining whether it is appropriate for tax funds to be spent on the activity.

Finally, you appear to argue that expending tax funds for these activities should be allowed because there is a custom or usage of doing so. The general rule, however, is:

[C]ustom or usage cannot of itself confer power on a municipal corporation. For instance, unlawful expenditures of money cannot be rendered valid by long-continued usage. . . . Exercise of a power for a long period raises no presumption that such power was granted.

McQuillin, Municipal Corporations, § 10.17 (3rd ed.) (footnotes omitted).

In sum, it is our opinion that the tax funds of a fire protection district may be spent only on the purposes enumerated in [KRS 75.040\(1\): \(1\)](#) to defray the expenses of the establishment, maintenance, and operation of a fire protection district; or (2) to make contracts for fire protection for the district. To qualify as an expenditure for the establishment, maintenance, and operation of a fire protection district, an expenditure must fit within one of the categories listed above at p. 5, or must be indispensable to carrying out the objects included in one of those categories. It is our opinion that expenditures of tax funds for activities such as picnics, parties, bowling league memberships, softball and basketball league memberships, and dances do not qualify as allowable expenditures of fire protection district tax funds.

We have nothing but admiration for the dedication of volunteer firefighters, and we understand the desire to provide these activities for volunteer firefighters and their families in appreciation for that dedication. Certainly, private individuals or organizations such as the firefighter auxilliary groups that you describe may raise funds and spend them on these activities if they wish to do so. The use of tax funds for these activities, however, has not been authorized by the legislature and is, therefore, not allowable.

2. Use of Fire Protection District Equipment

The second issue raised in your letter and brief concerns the use of fire protection district equipment. Specifically, you ask us to address the question of whether fire protection district equipment can be used to assist the Crusade for Children.

As we understand it from the information in your brief, the Crusade for Children is a charitable effort to raise funds that are distributed to agencies throughout Kentucky that help children who have mental and physical handicaps. These funds are distributed to state agencies and to special education departments in various local school districts. All of the money donated to the Crusade for Children is distributed to these agencies.

***5** Volunteer firefighters traditionally participate in the Crusade for Children by soliciting funds on street corners for the Crusade. (This is a voluntary effort by these firefighters; no one is required by a fire protection district to participate in the Crusade for Children.) Fire protection equipment is parked at intersections near where the solicitation of funds occurs. The equipment is used to transport volunteers within the district to the areas in which they solicit funds, to collect the funds within the district, and to transport the funds to the Crusade for Children headquarters in downtown Louisville for deposit. Except for the one trip to the Crusade for Children headquarters, the fire protection equipment is within the fire protection district, in the custody of volunteer firefighters, and available for immediate response to any fire alarm.

It is our opinion that the use of fire protection district equipment for activities other than fire protection activities is allowable under certain limited circumstances. First, such use must be for a public purpose. Second, such use must be de minimus, i.e., it must not materially diminish the value of the equipment. Third, such use must not interfere with the duty of the fire protection district to prevent the loss of lives and property by fire.

The use of the fire protection district equipment for the Crusade for Children campaign, as described above, appears to meet this standard. First, the use of the equipment is for the public purpose of benefitting the handicapped children of Kentucky. Second, the use of the equipment is limited to short drives and parking at intersections, which is a de minimus use that will not materially diminish the value of the equipment. Third, the use of the equipment does not interfere with the fire protection duties of the fire protection district, because the equipment is always ready and available for immediate response to any fire alarm.

In conclusion, it is our opinion that use of fire protection district equipment for the Crusade for Children campaign, as described above, is an allowable use of that equipment.

Sincerely yours,
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